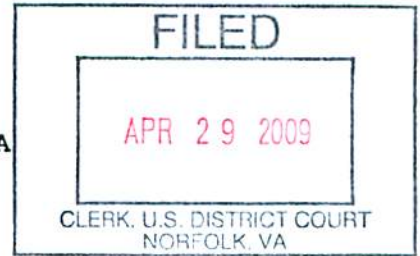


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



JAMES HENRY GARRISON,  
Petitioner,

v.

Case No. 2:08cv522

PATRICIA STANSBERRY, Warden,  
Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a federal inmate incarcerated at Petersburg, FCC, challenges the determination that he is not entitled to confinement at a Residential Re-Entry Center ("RRC") for more than the last six months of his sentence. Petitioner is scheduled to be released in December 2009.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge was filed February 10, 2009, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received Petitioner's objections to the report and recommendation on

February 18, 2009. Petitioner also filed a motion to amend the petition for writ of habeas corpus, with a memorandum in support, on February 18, 2009. The Respondent filed no response to the report and recommendation or to the motion to amend.

In his motion to amend, Petitioner asserts that the staff at FCC Petersburg are retaliating against Petitioner for filing the instant petition for a writ of habeas corpus by delaying the bureaucratic processing of his application for pre-release placement in an RRC. Federal Rule of Civil Procedure 15(a)(2) provides that the Court "should freely give leave [to amend] when justice so requires." See also Foman v. Davis, 371 U.S. 178, 182 (1962). The Court should only deny leave to amend a pleading "when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." Laber v. Harvey, 438 F.3d 404, 426 (4th Cir. 2006) (en banc) (quotation omitted). Petitioner's motion to amend is futile because the harm it alleges is speculative. Petitioner does not point to any specific acts of retaliatory behavior. Rather, he only asserts that the prison is taking a long time to have his application approved. The Court notes that Petitioner has been recommended for a 180-day placement in an RRC and that that placement would not begin until June 2009. Therefore, as of this Final Order, Petitioner has not suffered any cognizable harm because he has not been denied any portion of the

180-day placement in an RRC. Accordingly, the Court DENIES Petitioner's motion to amend as futile. Laber, 438 F.3d at 426.

The Court, having reviewed the record does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on February 10, 2009, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED as the claims are not exhausted and are without merit because the Bureau of Prisons properly considered Petitioner's application. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty (60) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

  
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**Mark S. Davis**  
**United States District Judge**

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

April 29, 2009